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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
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6 Jose Cesar Camacho,

7 Petitioner

8 v.

9 Joseph Michael Lombardo, *et al.*

10 Respondents.
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Case No. 2:18-cv-02085-GMN-GWF

Order

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13 This *pro se* habeas petition, under 28 U.S.C. § 2241, was filed by Jose Cesar
14 Camacho in the United States District Court for the Northern District of California on
15 October 24, 2018, and was transferred to this Court on October 29, 2018 (ECF Nos. 1,
16 2). The petition is before this Court for initial review under Rule 4 of the Rules
17 Governing Section 2254 Cases in the United States District Courts.

18 It appears from the petition and the exhibits filed with it that Camacho is a pretrial
19 detainee at the Clark County Detention Center in Las Vegas. Therefore, his petition is
20 properly filed under 28 U.S.C. § 2241. However, Camacho's petition was not drafted
21 using the form provided by this Court as required by Local Rule LR 3-1. The Court will
22 require Camacho to file an amended petition using the correct form.

23 Camacho's petition was apparently drafted and signed by John L. Gavello, who
24 describes himself as a licensed California investigator and friend of Camacho. See
25 Petition for Writ of Habeas Corpus (ECF No. 1), p. 1. Gavello does not claim to be an
26 attorney. Camacho's amended petition must be signed by Camacho, or by an attorney
27 with authority to represent him in this Court.
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1 Moreover, it appears that Camacho's petition is wholly unexhausted in state
2 court, is barred by the abstention doctrine represented by *Younger v. Harris*, 401 U.S.
3 37 (1971), and is subject to dismissal without prejudice on those grounds. The Court will
4 require Camacho to show cause in writing why this action should not be dismissed
5 without prejudice on one or both of those grounds.

6 A state criminal defendant seeking to restrain pending state proceedings by
7 means of a federal petition for writ of habeas corpus must first exhaust available state
8 court remedies before presenting his claims in the federal court. This exhaustion rule,
9 applicable to requests for federal court intervention in pending state criminal
10 proceedings, is grounded in principles of judicial restraint that predate and operate
11 independently of the statutory exhaustion requirement in 28 U.S.C. § 2254(b)(1). *See*,
12 *e.g.*, *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 489-92 (1973);
13 *Carden v. Montana*, 626 F.2d 82, 83 (9th Cir. 1980). To satisfy the exhaustion
14 requirement regarding a claim, the claim must have been fairly presented to the state
15 courts completely through to the highest state court available. *See, e.g.*, *Peterson v.*
16 *Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (en banc); *Vang v. Nevada*, 329 F.3d
17 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
18 federal constitutional guarantee he believes has been violated, and he must state the
19 facts that he claims entitle him to relief on the federal constitutional claim. *See, e.g.*,
20 *Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir. 2000). That is, the petitioner must
21 present the state courts with both the operative facts and the federal legal theory upon
22 which the claim is based. *See, e.g.*, *Castillo v. McFadden*, 399 F.3d 993, 999 (9th Cir.
23 2005). The exhaustion requirement insures that the state courts, as a matter of federal-
24 state comity, will have the first opportunity to pass upon and correct alleged violations of
25 federal constitutional guarantees. *See, e.g.*, *Coleman v. Thompson*, 501 U.S. 722, 731
26 (1991).

27 While it appears from Camacho's petition, and the exhibits he filed with it, that he
28 may have filed a petition for writ of habeas corpus and a mandamus petition in state

1 court, there is no indication that those proceedings have been completed, and, at any
2 rate, it is unclear whether Camacho pursued, in those state-court proceedings, the
3 same federal constitutional claims that he pursues in this case. Thus, it appears that
4 Camacho's claims in this case are unexhausted in state court. Accordingly, Camacho
5 must show cause why this action should not be dismissed because of his failure to
6 exhaust any of his claims in state court.

7 Turning to the issue of *Younger* abstention, even when claims in a federal
8 habeas petition have been fully exhausted in state court, a federal court will not
9 entertain a habeas petition seeking intervention in a pending state criminal proceeding,
10 absent special circumstances. See, e.g., *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th
11 Cir. 1983); *Carden*, 626 F.2d at 83-85. This rule of restraint, grounded on principles of
12 comity, stems from the Supreme Court's decision in *Younger*. Under the rule, federal
13 courts may not interfere with pending state criminal proceedings absent extraordinary
14 circumstances. Camacho must show cause why this action should not be dismissed
15 without prejudice under the *Younger* abstention doctrine.

16 **IT IS THEREFORE ORDERED** that the petitioner must, within 45 days from the
17 date of this order, file an amended petition for writ of habeas corpus on the form
18 provided by the Court.

19 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to send the
20 petitioner, along with this order, two copies of the form for a petition for writ of habeas
21 corpus under 28 U.S.C. § 2241 (Form AO 242), and one copy of his original petition in
22 this case (ECF No. 1).

23 **IT IS FURTHER ORDERED** that the petitioner must clearly title the amended
24 petition as an amended petition by placing the word "AMENDED" immediately above
25 "PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241" on page 1
26 of the form, and shall place the case number for this case (2:18-cv-02085-GMN-GWF)
27 in the space to the right of the caption on the first page of the form. Under LR 15-1, the
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1 amended petition must be complete without reference to any previously filed papers,
2 including the original petition in this case.

3 **IT IS FURTHER ORDERED** that, within 45 days from the date of this order, the
4 petitioner must file a separate document entitled "Response to Order to Show Cause"
5 showing cause: (a) why this action should not be dismissed without prejudice because
6 of the petitioner's failure to exhaust his claims in state court, and (b) why this action
7 should not be dismissed without prejudice under the *Younger* abstention doctrine. The
8 petitioner's showing must be factually detailed, and must, where possible, be supported
9 by exhibits.

10 **IT IS FURTHER ORDERED** that, if the petitioner does not timely and fully
11 respond to this order, by filing an amended petition and a response to the order to show
12 cause as required, this action will be dismissed without prejudice.

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14 DATED THIS 1 day of November, 2018.

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18 GLORIA M. NAVARRO,
19 CHIEF UNITED STATES DISTRICT JUDGE
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